even though there was in force in the foreign state a compensation act construed to have extraterritorial effect, the same court in another case[30] applied the Connecticut Act on the ground that the contract was made with specific reference to the rendering of services in Connecticut. Under the quasi-contractual theory, as under the tort theory, the law of state Y would always be applied despite express contrary stipulations in the contract.[31]

In a jurisdiction following strictly the contract theory, the X statute should control the right to compensation;[32] and it would seem that if there were no statute in state X, the courts of state Y should permit a recovery in a common law form of action. On the other hand, however, in a jurisdiction adhering to the tort theory the law of state Y would be held to govern.[33]

No decided cases have been found which fall within the fifth group, that is, where the contract is made in state X, the injury occurs in state Y and suit is brought in state Z. Under no circumstances does it seem conceivable that the court could find an excuse for applying the law of Z. Where both X and Y would apply the *lex loci contractus,* the courts of state Z should enforce the X statute, unless the remedy provided is impossible of enforcement.[34] Where no compensation act is in force in state Y, and the X courts have decided that the X statute has no application to injuries outside the state, the remedy would be limited to an action for damages and the tort law of state Y would control. Conceivably the courts of state Z might consider what remedies would be open to the applicant for compensation in states X and Y and then choose the remedy that could be most conveniently enforced. Such procedure might lead to serious complications in the future but in considering the other cases *de novo* this seems to be what the courts have really done.

Nearly every act differs from every other, among other things, in provisions for insurance, and in respect to the composition and jurisdiction of the boards and commissions designated for the adjudication of claims. Because of this diversity the courts in interpreting the nature of the liability imposed according to any recognized principles of law are unable to extricate themselves from labyrinthine confusion. Thus the need for some Ariadne to lead them with the guiding string of legislative uniformity is apparent.

EQUITABLE RELIEF FROM OPERATION OF ACCELERATION CLAUSES IN MORTGAGES.—It is well settled that a provision in a mortgage giving the mortgagee the right to foreclose for the principal sum immediately upon a default in the payment of interest will be enforced.[1] If the creditor, however, before the day set for payment prevents or refuses to accept a tender of the amount due, foreclosure will be denied.[2] Where the mortgagee has received prior payments of interest after they were due without claiming the right to avail himself of the provision for foreclosure, he cannot take advantage of a subsequent default where the purpose is not to secure prompt payment of the interest but only to compel the defendant to deed him the mortgaged property.[3] Equity will also relieve a mortgagor from foreclosure where

[30] *Banks* v. *Howlett Co.* (1918) 92 Conn. 368, 102 Atl. 822.
[31] *Carl Hagenbeck, etc.* v. *Randall* (Ind. 1920) 126 N. E. 501.
[32] *Barnhart* v. *American Concrete Steel Co.* (1920) 227 N. Y. 531, 125 N. E. 675.
[33] *Rorvik* v. *North Pac. Lumber Co.* (1920) 99 Ore. 58, 190 Pac. 331.
[34] *Supra,* footnote 11.

[1] *Buffalo C. L. & I. Co.* v. *Swegart* (1916) 176 Iowa 422, 156 N. W. 70; *First State Bank of Decatur* v. *Day* (1915) 188 Mich. 228, 154 N. W. 101; *Weinstein* v. *Sinel* (1909) 133 App. Div. 441, 117 N. Y. Supp. 346.
[2] *Schieck* v. *Donohue* (1904) 92 App. Div. 330, 87 N. Y. Supp. 206; *Noyes* v. *Clark* (N. Y. 1838) 7 Paige 179.
[3] *French* v. *Row* (1894) 77 Hun 380, 28 N. Y. Supp. 849.

the default is occasioned by the appointment of temporary receivers if it appears that the mortgagee was not injured by the default.[4]

In the recent case of *Trowbridge* v. *Malix Realty Co.* (1st Dept. 1921) 198 App. Div. 656, 191 N. Y. Supp. 97, foreclosure of a second mortgage was denied although there was an express provision in the mortgage that upon a default of ten days in the payment of interest due on the first mortgage, the second mortgagee might foreclose for his whole debt. The defendant was not personally liable on the first mortgage. He was also owner of adjacent property on which there was a first mortgage. Interest on the mortgage in this suit and also on the first mortgage on the adjacent premises was payable on the first of April, but the interest on the prior mortgage on the premises in suit was due on the first of March. There was no mention of this in the second mortgage. The first mortgage contained a provision for foreclosure in case of default in payment of interest for thirty days. There was a default of over ten days. The defendant first learned of this when one of its officers saw in a newspaper that the summons in the present action had been served. It immediately tendered the amount due to the mortgagee. At first blush, the decision seems somewhat startling: the court refuses to give effect to the express provisions of the agreement.[5] Such action, however, is not unusual. Equity frequently refuses to recognize the express contractual provisions for the security of a loan where their enforcement would not be consonant with substantial justice. Thus equity protects the mortgagor's equity of redemption and refuses to allow him to contract away his right to redeem.

On analogous grounds, where a relatively large sum has been paid, even after default, specific performance is granted of a contract for the sale of land although it was expressly provided that upon default of any installment the rights under the contract should be forfeited.[6] Even where it was stipulated that time was of the essence, a vendee obtained specific performance of such a contract where it appeared that the plaintiff's default was not wilful and the defendant was not injured.[7] So also specific performance of a contract requiring the vendee to pay taxes was granted, even though the vendee did not pay before dlinquency.[8] If the vendor does not insist upon his rights immediately; but allows the vendee to proceed or to

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[4] *Smith* v. *Lamb* (1908) 59 Misc. 568, 111 N. Y. Supp. 455.

[5] "The judgment herein, providing that, upon the payment by the defendant College Holding Company, Inc., of the full taxable costs and disbursements of the plaintiff herein, the defendant be relieved of the forfeiture by reason of its default in the payment of the interest upon the prior mortgage, and that the plaintiff's complaint be dismissed upon the payment of said costs and disbursements, and upon the failure of the defendant to pay said costs and disbursements, as aforesaid, judgment of foreclosure be granted plaintiff, with costs of action, amply protected all of the plaintiff's rights." *Trowbridge* v. *Malix Realty Co., supra,* 109. There was no default in payment of interest on the second mortgage.

[6] *John* v. *McNeal* (1911) 167 Mich. 148, 132 N. W. 508; *In re Dagenham Dock Co.* (1873) L. R. 8 Ch. 1022; *cf. Cornwall* v. *Henson* [1900] 2 Ch. 298 (where specific performance was denied because of the plaintiff's laches but damages granted).

[7] *Richmond* v. *Robinson* (1864) 12 Mich. 193; *Grigg* v. *Landis* (1870) 21 N. J. Eq. 494; *In re Dagenham Dock Co., supra,* footnote 6; *Camp Mfg. Co.* v. *Parker* (C. C. A. 1899) 91 Fed. 705. The contract contained a provision that if the vendee "fails to pay any amount when due it shall have notice of ten days, and if, after the expiration of the ten days, it remains unpaid, the contract is at an end." Time was of the essence. The defendant wrote the plaintiff asking him to ascertain the amount due and to send him a check. A few days later he again wrote to the same effect. The plaintiff did not pay until a month later. Defendant refused to accept. *Held,* in an action for specific performance, that the letters were insufficient notice to work a forfeiture. But see *Hall & Rawson* v. *Delaplaine and others* (1853) 5 Wis. 206, 214.

[8] *McCartey* v. *Gokey* (1871) 31 Iowa 505.

make improvements, he cannot later enforce his rights.[9] And courts have even gone to the questionable extent of specifically enforcing a renewal clause in a lease which because of an unavoidable accident, was not accepted until after the date specified.[10]

Other cases in which equity exercises the same discretion are those where leases have been given containing the provision that the lease will be absolutely void or that the lessor has the right of re-entry on non-payment of rent. In either case frequently the lessee will be relieved from the forfeiture.[11] So, where the lessor has accepted several late payments without mentioning his rights, he cannot later insist upon them.[12] Likewise, if by mistake or accident a provision for proper insurance has not been fulfilled, equity will grant relief against forfeiture.[13] A lessor, also, has been prevented from taking advantage of a trivial breach of a provision as to taxes[14] and as to cutting standing timber,[15] where it appears that he has not been injured.

In all the above cases, the stipulations not enforced concerned security. Their non-enforcement was due to the fact that the creditor was amply safeguarded without the need of subjecting the debtor to a forfeiture.

An example of similar relief by a law court is the granting of damages in a contract action despite proof of only substantial performance of an express condition precedent.[16]

Both upon principle and authority, therefore, the decision in *Trowbridge* v. *Malix Realty Co.* is correct. The mortgagor should be relieved from what amounts to a forfeiture[17] where he is not wilfully in default and where the mortgagee is not damaged.[18]

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[9] *Sylvester* v. *Born* (1890) 132 Pa. St. 467, 19 Atl. 337; *Grigg* v. *Landis, supra,* footnote 7.

[10] *Monihon* v. *Wakelin* (1899) 6 Ariz. 225, 56 Pac. 735; *New York Life Ins. Co.* v. *Rector, etc. of St. George's Church* (1883) 12 Abb. N. C. 50; *aff'd* 102 N. Y. 697. The plaintiff as trustee was assignee of a long term lease which contained a renewal clause. Improvements of great value ($30,000) had been made on the premises. The plaintiff was misled by statements of the defendant's collector as to the date of expiration of the lease. As a consequence the plaintiff did not notify the defendants of his intention to renew until thirty-six days after contract time. *Held,* equity will relieve from forfeiture. *Contra, Doepfner* v. *Bowers* (1907) 55 Misc. 561, 106 N. Y. Supp. 932. It should be noted, however, that the cases do not involve the prevention of a forfeiture of rights which had accrued under a contract. The courts merely held open an offer beyond the stipulated time, and held a contract had been constituted.

[11] *McKean Nat. Gas Co.* v. *Wolcott* (1916) 254 Pa. 323, 98 Atl. 955 (void); *Beach* v. *Nixon* (1853) 9 N. Y. 35 (void); *Mulvey Mfg. Co.* v. *McKinney* (1914) 184 Ill. App. 476 (right of re-entry); *South Penn. Oil Co.* v. *Edgell* (1900) 48 W. Va. 348, 37 S. E. 596 (right of re-entry).

[12] *Palmer & Singer* v. *Barney Estate Co.* (1912) 149 App. Div. 136, 133 N. Y. Supp. 876. *Cf. supra,* footnote 8.

[13] *Mactier* v. *Osborn* (1888) 146 Mass. 399, 15 N. E. 641.

[14] *Giles* v. *Austin* (1875) 62 N. Y. 486; see *Garner* v. *Hannah* (N. Y. 1857) 6 Duer 262, 275. *Cf., supra,* footnote 9.

[15] *Baxter* v. *Lansing* (N. Y. 1838) 7 Paige 350.

[16] (1921) 21 COLUMBIA LAW REV. 582 where the subject is fully discussed.

[17] See *Noyes* v. *Clark, supra,* footnote 2, p. 181; *French* v. *Row, supra,* footnote 3, p. 384.

[18] *Loughery* v. *Catalono* (1921) 191 N. Y. Supp. 436; *Germania Life Ins. Co.* v. *Potter* (1908) 124 App. Div. 814, 109 N. Y. Supp. 435; *Ver Planck* v. *Godfrey* (1899) 42 App. Div. 16, 58 N. Y. Supp. 784; *Noyes* v. *Anderson* (1891) 124 N. Y. 175, 26 N. E. 316; *cf. Baxter* v. *Lansing, supra,* footnote 6; *Giles* v. *Austin, supra,* footnote 15.

The plaintiff in the instant case was not damaged since the default, being for less than thirty days, was not of sufficient duration to permit the accelerated foreclosure of the first mortgage.